

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF:

ITT Hancock Industries, Inc.
10161 North Roscommon Rd.
Roscommon, MI 48653

RCRA Docket No.
V-W-84-R-064

EPA I.D. No. MID 041115106

FINAL ORDER

WHEREAS, the U.S. Environmental Protection Agency ("EPA") filed an Administrative Complaint against ITT Hancock Industries, Inc. ("Respondent") on August 17, 1984, alleging that certain lagoons at Respondent's Roscommon, Michigan plant contained F006 listed hazardous wastes and that Respondent had violated the regulations for treatment, storage and disposal of those wastes; and

WHEREAS, Respondent answered EPA's Complaint, asserting that the wastes were not F006 hazardous wastes and not otherwise hazardous and that Respondent had not violated any provisions of the Resource Conservation and Recovery Act ("RCRA") or the regulations promulgated thereunder; and

WHEREAS, Respondent was properly served with a copy of the Complaint, with notice of opportunity for hearing in this matter, and the Regional Administrator has jurisdiction over this matter pursuant to Section 3008 of RCRA, 42 U.S.C. §6928; and

WHEREAS, Complainant and Respondent entered into a Consent Agreement and Interim Order which, in part, stated as follows:

Among other defenses, Respondent has raised the equitable defense that the waste that is the subject of the Complaint is not, on the basis of test results, hazardous. Further, the Respondent has asserted and EPA has verified, that the waste is the subject of a delisting petition pursuant to 40 CFR 260.22. Complainant's review of the data in said petition strongly suggests that this petition will be granted. In that the pending review of this waste will render it no longer a hazardous waste, the Parties are desirous to tentatively settle this action, pending a decision on the delisting petition.

and

WHEREAS, said Consent Agreement and Interim Order further provides that:

In the event that the delisting petition dated and submitted on August 13, 1982 is granted, the parties will submit a Motion and Order for Dismissal, and this matter will be dismissed with prejudice and without penalty or other costs.

and

WHEREAS, said Consent Agreement and Interim Order was entered on February 25, 1985; and

WHEREAS, on January 14, 1987, the Office of Solid Waste and Emergency Response of EPA forwarded its letter to Thomas Allsteadt, Facilities Engineer for Respondent, a copy of which is attached as Exhibit A, and which, on the second page, stated as follows:

Based on [EPA's]. . . review of the processing and raw materials information submitted in support of your [delisting] petition [#0414], and the clarification provided in your recent correspondence, the [EPA]. . . has determined that your petitioned waste was generated from processes no longer covered by the F006 listing as described above. Therefore, we have discontinued the review of your petition.

and

WHEREAS, the EPA Administrator, acting through his delegate Ronald L. McCallum, Chief Judicial Officer, has ruled that non-electric etching wastes are not included within the F006 electroplating category because there was insufficient notice given in the regulations that those wastes were included in the F006 category. See In the Matter of U.S. Nameplate Co., Docket No. RCRA-84-H-0012 (March 31, 1986); and

WHEREAS, Complainant and Respondent stipulate and agree that the involved lagoon materials are not F006 listed hazardous wastes, nor are they otherwise hazardous wastes; and

WHEREAS, Complainant and Respondent further stipulate and agree that this matter should be dismissed with prejudice as to all violations which were or could have been alleged in the Complaint, but without prejudice in the event EPA properly promulgated new final regulations in accordance with the Administrative Procedures Act and other applicable law, to any claim for violation thereunder, provided such conduct occurs subsequent to the final promulgation of such new regulation, if any.

NOW, THEREFORE, in accordance with the foregoing and it appearing from the entire record that it is appropriate to do so:

1. It is hereby determined that the lagoon materials at Respondent's Roscommon plant which were the subject of the delisting petition are not regulated as F006 listed hazardous wastes, nor otherwise as hazardous wastes; and
2. It is further ordered that this matter should be, and the same hereby is, dismissed with prejudice as to all

the violations which were alleged in the Complaint;
and

3. In the event that EPA hereafter properly promulgates new final regulations relating to wastewater treatment sludge in accordance with the Administrative Procedures Act and other applicable law, this dismissal is without prejudice to any claim of violation thereof if the conduct constituting the violation, if any, by Respondent occurs subsequent to final promulgation of such new regulations, if any.

Entered this 12 day of March, 1987.

Consented to:

Chief Gerald Harwood
Administrative Law Judge

U.S. Environmental Protection Agency

By: Anne L. Delorzo

ITT HANCOCK INDUSTRIES, INC.,

By: _____

Raphael deRitis, President